

# **UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA**



## **BANKRUPTCY MEDIATION PROGRAM**

### **PROCEDURES MANUAL FOR PARTIES, ATTORNEYS & MEDIATORS**

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**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**BANKRUPTCY MEDIATION PROGRAM**

**I. INTRODUCTION**

**A. Program Purpose**

The United States Bankruptcy Court for the Central District of California (the “Court”) has established an alternative dispute resolution program known as the Bankruptcy Mediation Program (the “Mediation Program”). Second Amended General Order No. 95-01 (the “General Order”) established the Mediation Program effective July 1, 1995. The General Order, as amended periodically, governs the implementation and use of the Mediation Program.

The procedures established by the General Order are intended primarily to provide litigants with the means to resolve their disputes more promptly, at less cost, and to their mutual satisfaction, without the stress and pressure of litigation.

Unless otherwise ordered by the Judge handling the particular matter which is assigned to mediation (the “Judge”), all controversies arising in an adversary proceeding, contested matter or other dispute in a bankruptcy case will be eligible for referral to the Mediation Program.

It is the Court’s intention that the Mediation Program shall allow the participants to use a wide variety of alternative dispute resolution methods. These methods may include, but are not limited to, mediation, negotiation, early neutral evaluation and settlement facilitation.

The specific method(s) employed will be those that are appropriate and applicable to the Matter, as determined by the Mediator and the parties. The methods employed will therefore vary from Matter to Matter.

It is also the Court’s intention that all of the individuals appointed by the Court to serve as mediators for the Mediation Program (the “Panel”) shall, except in certain limited circumstances, serve on a *pro bono* basis and shall not require compensation or reimbursement of expenses for the full first day of at least one mediation conference per quarter per year. In those instances where the Mediator requests compensation after the Mediator has concluded at least one *pro bono* mediation for the particular quarter, the Mediator’s compensation shall be on such terms as are mutually agreed upon among the parties and the Mediator, and shall be subject to the prior approval of the Judge if the bankruptcy estate is to be charged with such expense.

## INTRODUCTION (CONTINUED)

The Panel is comprised of both attorneys and non-attorneys. A list of the individuals appointed to the Panel as of July 1, 1999 is included in the Appendix to this Manual.

### **B. Program Administration**

Judge Barry Russell has been appointed the Administrator of the Mediation Program (the “Mediation Program Administrator”).

### **C. Importance of Strict Adherence to Use of Specific Mediation Program Forms and Procedures**

The Court has designed special forms for use with the Mediation Program. Copies of these Official Forms are included in the Appendix to this Manual. **These are the only forms which shall be filed in connection with the Mediation Program.**

The Clerk’s Office has established special procedures for processing the Mediation Program documents and has specially programmed its automation system to handle the docketing of these documents. **It is particularly important that the titles of these documents not be changed in any way whatsoever.** If the title of any of these documents is changed, the title will not match the Clerk’s Office automation system and the processing of the document will be adversely affected, to the detriment of all parties.

**PROCEDURES:  
REQUEST FOR ASSIGNMENT  
TO MEDIATION PROGRAM;  
[PROPOSED] ORDER THEREON**

**ISSUED  
DATE  
07/01/95**

**REVISED  
DATE  
09/01/99**

**A. REQUEST FOR ASSIGNMENT TO MEDIATION PROGRAM; [PROPOSED]  
ORDER THEREON**

**1. Background:**

The General Order permits a contested matter in a case, adversary proceeding, or other dispute (hereinafter collectively referred to as “Matter” or “Matters”) to be assigned to the Mediation Program. See generally, Second General Order 95-01, Section 5.0. Assignment of a Matter to the Mediation Program will generally occur in one of three ways:

- a. by the mutual, voluntary request of the parties outside the course of a status conference or other court hearing;
- b. during a status conference or other court hearing; or
- c. by the Judge outside the course of a status conference or other hearing, either sua sponte or on the request of a party.

While participation by the parties is generally intended to be voluntary, occasions may arise when the Judge may designate specific Matters for inclusion in the Mediation Program over the objection of the parties.

**2. Procedures: “Request for Assignment to Mediation Program; [Proposed]  
Order Thereon”**

- a. *If the parties mutually and voluntarily request assignment of a Matter to the Mediation Program, the parties (or their counsel, if any) shall:*
  - 1) File an original and three (3) copies of the “Request for Assignment to Mediation Program; [Proposed] Order Thereon” (“Request for Assignment”) (Official Form 701) with the Court.
  - 2) The Request for Assignment shall include a proof of service which reflects service of the Request for Assignment on the proposed Mediator, the proposed Alternate Mediator, all parties to the Matter and their counsel, if any, and the Mediation Program Administrator.

- 3) A completed “**ORDER ASSIGNING MATTER TO MEDIATION PROGRAM AND APPOINTING MEDIATOR AND ALTERNATE MEDIATOR**” (“**Order for Assignment and Appointment**”) (Official Form 702) must be filed in conjunction with the Request for Assignment.

(See, Section B of this Manual for the procedures regarding the Order of Assignment and Appointment.)

- 4) In preparing the required Order for Assignment and Appointment, the parties (or their counsel, if any) shall:
- a) Refer to the Panel roster to ensure that the Mediator and Alternate Mediator requested on the Order for Assignment and Appointment are available. The roster is updated bimonthly and is available in most courtrooms and in the public information locations of each division of the court.
  - b) Telephone the proposed Mediator and Alternate Mediator to determine their availability and willingness to serve in the Matter before completing and filing the Request for Assignment and related Order for Assignment and Appointment. This is both a professional courtesy and a method of ensuring that those individuals are currently available to serve.
- 5) The Clerk’s Office shall review the Request for Assignment to determine if the Order for Assignment and Appointment has been filed in conjunction with the Request for Assignment, as required.
- 6) If the Clerk’s Office determines that an Order for Assignment and Appointment **has not** been filed in conjunction with the Request for Assignment, the Clerk’s Office will refer the Request for Assignment to the Judge. In that event:
- a) The Judge may direct that the Request for Assignment be returned to the submitting party with instructions that the Request for Assignment be refiled with an Order for Assignment and Appointment.
  - b) If the Judge does not direct that the Request for Assignment be returned to the submitting party as described above, and no Order for Assignment and Appointment is filed with the Court within fifteen (15) calendar days from the date of filing of the Request for Assignment, the Matter will be set for hearing so that the Judge may determine the status of the Matter.

- (1) If the Matter is set for hearing, the parties and their counsel, if any, will be served by the Court with an “Order for and Notice of Hearing on Status of Matter Assigned to Bankruptcy Mediation Program” (“OSC”) (Official Form 707 - Reserved for Use by Court Clerk’s Office Only). The OSC will set forth the date, time and place of the hearing.

(See, Section G of this Manual for the procedures regarding an “Order for and Notice of Hearing on Status of Matter Assigned to Bankruptcy Mediation Program.”)

- (2) If the parties (or their counsel, if any) file the Order for Assignment and Appointment with the Court and provide a courtesy copy of the document to the Judge at least 48 hours prior to the hearing date set forth on the OSC, the hearing will be taken off calendar. **The parties, however, are required to confirm with the Court that the Matter has, with the approval of the Judge, in fact been taken off calendar.**
- (3) If the parties (or their counsel, if any) fail to file the Order for Assignment and Appointment with the Court and provide a courtesy copy of the document to the Judge at least 48 hours prior to the hearing date set forth on the OSC, appearance at the hearing shall be required.

b. *If a Matter is assigned to the Mediation Program during a status conference or other court hearing:*

- 1) The parties will ordinarily be presented with a blank version of the Order for Appointment and Assignment, a Panel roster, and an opportunity to review a notebook containing the mediators’ biographical statements. The notebooks of biographical statements will be available in most courtrooms and in the public information locations of each division of the Court.
- 2) The parties will ordinarily be given the opportunity to confer and select a mutually acceptable Mediator and Alternate Mediator. If the parties cannot agree, or if the Judge deems selection by the Judge to be appropriate and necessary, the Judge shall select a Mediator and Alternate Mediator.

- 3) If the parties agree to the selection of a Mediator and Alternate Mediator during the course of a status conference or other court hearing, the parties (or their counsel, if any), shall follow the instructions given by the Judge during that court hearing regarding the procedures for processing the Order for Assignment and Appointment.
  - 4) If no such instructions are given, then refer to the procedures set forth in Section B.2.c. of this Manual which concerns the assignment and appointment by the Judge outside of the course of a status conference or other court hearing, either sua sponte or on the request of a party.
- c. *If a Matter is assigned to the Mediation Program by a Judge outside the course of a status conference or other court hearing, either sua sponte or on the request of a party:*
- 1) Refer to the procedures set forth in Section B.2.c. of this Manual.

### 3. Notes:

- a. **Reminder:** A completed “ORDER ASSIGNING MATTER TO MEDIATION PROGRAM AND APPOINTING MEDIATOR AND ALTERNATE MEDIATOR” (“Order for Assignment and Appointment”) (Official Form 702) must be filed *in conjunction with a Request for Assignment (Official Form 701)*.

(See, Section B of this Manual for the procedures regarding the Order of Assignment and Appointment.)

**PROCEDURES:  
ORDER ASSIGNING MATTER  
TO MEDIATION PROGRAM AND  
APPOINTING MEDIATOR AND  
ALTERNATE MEDIATOR**

**ISSUED  
DATE  
7/01/95**

**REVISED  
DATE  
09/01/99**

**B. ORDER ASSIGNING MATTER TO MEDIATION PROGRAM AND  
APPOINTING MEDIATOR AND ALTERNATE MEDIATOR**

**1. Background:**

Pursuant to the General Order, assignment of a Matter to the Mediation Program will generally occur in one of three ways:

- a. by mutual, voluntary request of the parties outside of any court hearing;
- b. during a status conference or other court hearing; or
- c. by the Judge outside the course of a status conference or other hearing, either sua sponte or on the request of a party.

While participation by the parties is generally intended to be voluntary, occasions may arise when the Judge may designate specific Matters for inclusion in the Mediation Program over the objection of the parties. See generally, Second Amended General Order, Section 5.0.

**2. Procedures: “Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator”**

- a. *If the Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator (“Order for Assignment and Appointment”) (Official Form 702) is submitted by the parties (or their counsel, if any) in conjunction with a Request for Assignment, the parties (or their counsel, if any) shall:*
  - 1) File an original and three (3) copies of the Order for Assignment and Appointment (Official Form 702) with the Court.
  - 2) The Order for Assignment and Appointment shall include a proof of service which reflects service of the Order for Assignment and Appointment on the Mediator, the Alternate Mediator, all parties to the Matter (and their counsel, if any) and the Mediation Program Administrator.

- 3) File a “Notice of Entry and Certificate of Mailing” of the Order for Assignment and Appointment, as required by Local Bankruptcy Rule 9021-1(1).
- 4) In preparing the Order for Assignment and Appointment, the parties (or their counsel, if any) shall:
  - a) Refer to the Panel roster to ensure that the Mediator and Alternate Mediator requested on the Order for Assignment and Appointment are available. The roster is updated bimonthly and is available in most courtrooms and in the public information locations in each division of the Court.
  - b) Telephone the proposed Mediator and Alternate Mediator to determine their availability and willingness to serve in the Matter before completing and filing the Request for Assignment and related Order for Assignment and Appointment with the Court. This is both a professional courtesy to the proposed Mediator and Alternate Mediator and a method of ensuring that those individuals are available to serve.
- b. *If the Order for Assignment and Appointment is generated during the course of a status conference or other court hearing:*
  - 1) Follow the instructions given by the Judge during that court hearing regarding the procedures for processing the Order for Assignment and Appointment.
  - 2) If no such instructions are given, refer to the procedures set forth in Section B.2.c. below.
- c. *If the Order for Assignment and Appointment is prepared by the Judge outside the course of a status conference or other hearing, either sua sponte or on the request of a party:*
  - 1) The Judge will generate the Order for Assignment and Appointment and will designate the individual who shall serve the Order for Assignment and Appointment in the section of the Order entitled “Instructions from the Court.” The Judge will also designate any individuals (in addition to the Mediator, Alternate Mediator, all parties to the Matter and their counsel, if any, and the Mediation Program Administrator) who shall be served with the Order for Assignment and Appointment.

- 2) The Court will mail the Order for Assignment and Appointment to the individual designated by the Judge to effect service of the Order for Assignment and Appointment.
- 3) The individual who is designated by the Court to effect service shall read and follow the “Instructions from the Court” section of the Order carefully, and shall:
  - a) Serve the Order for Assignment and Appointment on the Mediator, the Alternate Mediator, all parties to the Matter and their counsel, if any, the Mediation Program Administrator and the additional individuals and/or entities and/or parties, if any, listed in the “Instructions from the Court” section of the Order for Assignment and Appointment; and
  - b) File an original proof of service with the Court which reflects service of the Order for Assignment and Appointment on the Mediator, the Alternate Mediator, all parties to the Matter and their counsel, if any, the Mediation Program Administrator and the additional individuals and/or entities and/or parties, if any, listed in the “Instructions from the Court” section of the Order for Assignment and Appointment.

**3. Notes:**

- a. Local Bankruptcy Rule 9021-1(1) states:

**ORDERS AND JUDGMENTS**

**(1) PREPARATION, LODGING AND  
SIGNING OF DOCUMENTS**

- (a) Orders and Judgments. Except for orders incorporated with stipulations as allowed under subparagraph (1)(b) below, all orders or judgments shall be set forth in a separately captioned document complying with Local Bankruptcy Rule 1002-1, which shall include the notice of entry and the proof of service (if required). All proposed orders or judgments shall be accompanied by a proof of

service, reflecting notice to the proper parties, except for orders submitted at the hearing.

- (i) Who Shall Prepare. Unless the Court otherwise directs, all orders and judgments shall be prepared by the attorney for the prevailing party.
- (ii) When Due. If not presented at the hearing, such orders and judgments shall be served and lodged with the Clerk within seven (7) Court Days of the granting thereof. Except as provided for in Local Bankruptcy Rules 9013-1(5) and 7016-1(2)(a), in no case shall an order be lodged prior to the hearing on the underlying matter.
- (iii) Failure to Submit Timely Order or Judgment. If the prevailing party fails to serve and lodge a proposed order or judgment within the allotted time, then any other party present at the hearing may lodge and serve a proposed order. All other parties shall have seven (7) Court Days within which to file and serve an objection in compliance with Local Bankruptcy Rule 9021-1(1)(d). If no one submits a proposed order or judgment, the Court may prepare and enter such order or judgment as it may deem appropriate, including an order to show cause why the motion or proceeding should not be dismissed without prejudice for failure to prosecute.

- (iv) Copies and Envelopes.  
Except for orders that are subject to BNC noticing (e.g., an order dismissing the case), the original order or judgment shall be accompanied by copies and stamped, addressed envelopes for all parties entitled to notice of the entry of the order or judgment pursuant to F.R.B.P. 9022, or as the Court directs. The party submitting the order shall submit a copy and stamped, self-addressed envelope for the return of a conformed copy.
  
- (v) Notice of Entry of Order.  
Except for orders that are subject to BNC noticing (e.g., an order dismissing the case), proposed orders or judgments requiring notices of entry shall be accompanied by a separate notice of entry in the approved form for this District, to which shall be attached a mailing list of all parties, including the United States Trustee, who are required by F.R.B.P. 9022 to be served with the order or judgment. The form of notice shall include the title of the order or judgment, and shall leave appropriate blanks for the Clerk's office to insert the date of entry of the order or judgment and the date that the notice of entry and copy of the order or judgment were mailed by the Clerk's office.

- (b) Order Upon Stipulation. At the end of a stipulation of the parties to the granting of an order and following the signatures of counsel, the parties may provide a simple order in the form of the words, "IT IS SO ORDERED," a space for the date and a signature line for the Judge appearing immediately below. A separate order may be submitted in lieu of this form where required by F.R.B.P. 9021.
- (c) Service of Document. The attorney who has the duty to prepare any document required by this Local Bankruptcy Rule shall serve a copy on opposing counsel either before or on the same day that the document is lodged with the Court and shall file a proof of service with the document. Alternatively, the attorney preparing the document may present it to opposing counsel for approval as to form before the document is lodged, in which case opposing counsel shall immediately approve or disapprove the form of order and return it to counsel who prepared it. Where an order or judgment is tendered at the hearing, the order or judgment may be filed without prior service on the opposition.
- (d) Separate Objection. Opposing counsel may, within seven (7) Court Days after service of a copy of a document prepared pursuant to this Local Bankruptcy Rule, file and serve objections to the form of the document, setting forth the grounds thereof. A proposed alternative form of order so labeled, shall be lodged with the objections. A courtesy copy of the objection and proposed alternative form of order shall be

delivered to chambers upon filing.  
The failure to file timely objections shall be deemed a waiver of any defects in the form of the document.

- (e) Endorsement of Counsel. Except as provided herein with respect to unopposed orders, unless the Court otherwise directs, no document governed by this Local Bankruptcy Rule will be signed by the Judge unless either opposing counsel shall have endorsed thereon an approval as to form, or shall have stipulated thereto on the record at the hearing, or the time for objection to the form of the order has expired. If it finds the ends of justice so requires, the Court may conduct a hearing on the proper form of the document, or decide the objections without a hearing.
- (f) Unopposed Orders. Notwithstanding the preceding paragraphs, if no opposition has been made by a party or counsel at the hearing, the non-opposing party will be deemed to have waived any objection to the form of the order. The Court may sign an unopposed order at the hearing or immediately upon its lodging with the Clerk without waiting for the objection period to expire.
- (g) Signing of Orders for Absent Judges. Except as otherwise provided by F.R.Civ.P. 63, application for any order on a case or proceeding shall be made to the Judge to whom the case is assigned. If the Judge to whom the case or proceeding is assigned is not available and there is an emergency necessitating an order, the Judge's Courtroom Deputy shall

be consulted to determine whether a Judge of this Court has been designated to handle matters in the absence of the assigned Judge. If a designation has been made, the application shall be presented to the designated Judge. If no designation has been made, then the matter shall be presented to the duty Judge, or in his or her absence, to any other available Judge. If no emergency exists, the application will be held by the assigned Judge's Courtroom Deputy until the assigned Judge is available. Any Judge may sign an order for another Judge.

- (h) Obtaining Certified Copies of Order or Judgments. Payment for certified copies of orders or judgments shall be made to the cashier in the Clerk's Office. No checks will be accepted in the courtroom or by Courtroom Deputies. If a certified copy of a stipulated or default order is desired, the order or judgment may either be presented in the courtroom together with a Clerk's receipt showing prepayment of the certification fee, or else the certified copy may be requested from the Clerk's Office after the order has been signed and entered.
- (i) Relief From Stay Orders to Proceed in Another Forum. If the Court grants an order to lift the automatic stay and to proceed in another forum, the prevailing party shall file a copy of that order in that forum.

**PROCEDURES:  
NOTICE OF MEDIATOR'S OR  
ALTERNATE MEDIATOR'S  
UNAVAILABILITY TO SERVE  
IN MEDIATION MATTER**

**ISSUED  
DATE  
7/01/95**

**REVISED  
DATE  
09/01/99**

**C. NOTICE OF MEDIATOR'S OR ALTERNATE MEDIATOR'S  
UNAVAILABILITY TO SERVE IN MEDIATION MATTER**

**1. Background:**

Pursuant to Paragraph 7.2 of the General Order, if the **Mediator is not available** to serve in the Matter, the Mediator shall notify the parties and their counsel, if any, the Alternate Mediator and the Mediation Program Administrator of that fact as soon as possible, but no later than seven (7) calendar days from the date of receipt of notification of appointment. **Upon notification of the Mediator's unavailability to serve, the Alternate Mediator shall automatically serve as the Mediator without the necessity for further court order.**

Pursuant to Paragraph 7.3 of the General Order, once the **Alternate Mediator** receives notice of appointment and determines that he or she is **not available** to serve in the Matter, the Alternate Mediator shall also notify the parties and their counsel, if any, and the Mediation Program Administrator of that fact as soon as possible, but no later than seven (7) calendar days from the receipt of notification by the Mediator of the Mediator's unavailability to serve.

**2. Procedures: "Notice of Mediator's or Alternate Mediator's Unavailability  
To Serve In Mediation Matter"**

- a. The Mediator and/or the Alternate Mediator, as applicable, shall file an original and three (3) copies of the "Notice of Mediator's or Alternate Mediator's Unavailability To Serve In Mediation Matter" ("Notice of Unavailability") (Official Form 703) with the Court.
- b. The Notice of Unavailability shall include a proof of service which reflects service of the Notice of Unavailability on the Alternate Mediator (if filed by the Mediator), all parties to the Matter and their counsel, if any, and the Mediation Program Administrator. The proof of service shall also reflect that a courtesy copy of the Notice of Unavailability was provided to the Judge as required by Paragraphs 7.2 and/or 7.3 (as applicable) of the General Order.

- c. Upon receipt by the Court of the Notice of Unavailability, the Clerk's Office will tickler the Matter for fifteen (15) calendar days.
- d. Pursuant to Paragraph 7.4 of the General Order, the parties are required, within seven (7) calendar days of receipt of the **Alternate Mediator's** notification of unavailability to serve in a Matter, to either (a) choose a mutually acceptable Successor Mediator and Alternate Successor Mediator, or (b) notify the Judge and the Mediation Program Administrator of their inability to agree on a choice of Successor Mediator and Alternate Successor Mediator.
- e. If the parties (or their counsel, if any) fail to file with the Court a "Notice of Request and Request for Appointment of Successor Mediator and/or Alternate Successor Mediator to Mediation Program; [Proposed] Order Thereon" ("Request for Successor") (Official Form 704) within fifteen (15) calendar days from the date of filing of the **Alternate Mediator's** Notice of Unavailability, the Matter will be set for hearing so that the Judge may determine the status of the Matter.  
  
(See, Section D of this Manual for the procedures regarding the Request for Successor.)
- f. If the Matter is set for hearing, the parties and their counsel, if any, shall be served by the Court with an "Order for and Notice of Hearing on Status of Matter Assigned to Bankruptcy Mediation Program" ("OSC") (Official Form 707 - Reserved for Use by Court Clerk's Office Only). The OSC will set forth the date, time and place of the hearing.  
  
(See, Section G of this Manual for the procedures regarding an OSC.)
- g. If the parties (or their counsel, if any) file a Request for Successor and the required Order for Assignment and Appointment of a Successor Mediator and Alternate Successor Mediator and provide a courtesy copy to the Judge at least 48 hours prior to the hearing date set forth on the OSC, the hearing will be taken off calendar. **The parties, however, are required to confirm with the Court that the Matter has, with the approval of the Judge, in fact been taken off calendar.**
- h. If the parties (or their counsel, if any) fail to file the Order for Assignment and Appointment of a Successor Mediator and Alternate Successor Mediator with the Court and provide a courtesy copy of the document to the Judge at least 48 hours prior to the hearing date set forth on the OSC, appearance at the hearing shall be required.

**3. Notes:**

- a. Upon receipt of notice of appointment to serve in a Matter, the Mediator and/or Alternate Mediator, as applicable, shall immediately telephone the parties and their counsel, if any, and the Mediation Program Administrator to communicate his or her unavailability to serve in the Matter.
- b. The **Mediator's Notice of Unavailability will not** trigger the issuance of an OSC by the Court to set the Matter for hearing. It is the **Alternate Mediator's Notice of Unavailability** to serve in the Matter which **will** trigger issuance of an OSC by the Court.

**PROCEDURES:  
NOTICE OF REQUEST AND REQUEST  
FOR APPOINTMENT OF SUCCESSOR  
MEDIATOR AND/OR ALTERNATE  
SUCCESSOR MEDIATOR TO MEDIATION  
PROGRAM; [PROPOSED] ORDER THEREON**

**ISSUED  
DATE  
7/01/95**

**REVISED  
DATE  
09/01/99**

**D. NOTICE OF REQUEST AND REQUEST FOR APPOINTMENT OF SUCCESSOR  
MEDIATOR AND/OR ALTERNATE SUCCESSOR MEDIATOR TO MEDIATION  
PROGRAM; [PROPOSED] ORDER THEREON**

**1. Background:**

Pursuant to Paragraph 7.4 of the General Order, the parties shall, within seven (7) calendar days of receipt of the **Alternate Mediator's** notification of unavailability to serve in a Matter, either (a) choose a mutually acceptable Successor Mediator and Alternate Successor Mediator, or (b) notify the Judge and the Mediation Program Administrator of their inability to agree on a choice of Successor Mediator and Alternate Successor Mediator.

Pursuant to Paragraph 5.6 of the General Order, a party who believes that an assigned Mediator and/or Alternate Mediator has a conflict of interest shall promptly bring the issue to the attention of the Mediator and/or Alternate Mediator, as applicable. If the Mediator and/or Alternate Mediator does not withdraw from the assignment, the issue shall be brought to the attention of the Judge in writing by the Mediator, the Alternate Mediator, or any of the parties.

**2. Procedures: "Notice of Request and Request for Successor Mediator and/or  
Alternate Successor Mediator; [Proposed] Order Thereon"**

a. *If the parties **agree** on a choice of Successor Mediator and Alternate Successor Mediator, the parties (or their counsel, if any) shall:*

- 1) File an original and three (3) copies of the "Notice of Request and Request for Appointment of Successor Mediator and/or Alternate Successor Mediator to Mediation Program; [Proposed] Order Thereon" ("Request for Successor") (Official Form 704) with the Court.
- 2) The Request for Successor shall include a proof of service which reflects service of the Request for Successor on the proposed Successor Mediator and/or Alternate Successor Mediator, all

parties to the Matter and their counsel, if any, and the Mediation Program Administrator. The proof of service shall also reflect that a courtesy copy of the Request for Successor was provided to the Judge as required by Paragraph 7.4 of the General Order.

- 3) **A completed “ORDER ASSIGNING MATTER TO MEDIATION PROGRAM AND APPOINTING MEDIATOR AND ALTERNATE MEDIATOR” (“Order for Assignment and Appointment”) must be filed in conjunction with the Request for Successor.**

(See, Section B of this manual for the procedures regarding the Order of Assignment and Appointment.)

- 4) In preparing the required Order for Assignment and Appointment, the parties (or their counsel, if any) shall:
  - a) Refer to the Panel roster to ensure that the Successor Mediator and Alternate Successor Mediator requested on the Order for Assignment and Appointment are available. The roster will be updated at least weekly and will be available in most courtrooms and in the public information locations of each division of the court.
  - b) Telephone the proposed Successor Mediator and Alternate Successor Mediator to determine their availability and willingness to serve in the Matter before completing and filing the Request for Successor and related Order for Assignment and Appointment. This is both a professional courtesy and a method of ensuring that those individuals are currently available to serve.
- 5) The Clerk’s Office shall review the Request for Successor to determine if an Order for Assignment and Appointment has been filed in conjunction with the Request for Successor, as required.
- 6) If the Clerk’s Office determines that an Order for Assignment and Appointment **has not** been filed in conjunction with the Request for Successor, the Clerk’s Office will refer the Request for Successor to the Judge. In that event:
  - a) The Judge may direct that the Request for Successor be returned to the submitting party with instructions that the Request for Successor be refiled with an Order for Assignment and Appointment.
  - b) If the Judge **does not** direct that the Request for Successor

be returned to the submitting party as described above, and no Order for Assignment and Appointment is filed with the Court within fifteen (15) calendar days from the date of filing of the Request for Successor, the Matter will be set for hearing so that the Judge may determine the status of the Matter.

- (1) If the Matter is set for hearing, the parties and their counsel, if any, shall be served by the Court with an OSC. The OSC shall set forth the date, time and place of the hearing.

(See, Section G of this Manual regarding the procedures for an OSC.)

- (2) If the parties (or their counsel, if any) file the Order for Assignment and Appointment of Successor Mediator and Alternate Successor Mediator with the Court and provide a courtesy copy of the document to the Judge at least 48 hours prior to the hearing date set forth on the OSC, the hearing will be taken off calendar. **The parties, however, are required to confirm with the Court that the Matter has, with the approval of the Judge, in fact been taken off calendar.**
- (3) If the parties (or their counsel, if any) fail to file an Order for Assignment and Appointment of Successor Mediator and Alternate Successor Mediator with the Court and provide a courtesy copy of the document to the Judge at least 48 hours prior to the hearing date set forth on the OSC, appearance at the hearing shall be required.

b. *If the parties are **unable to agree** on a choice of Successor Mediator and Alternate Successor Mediator, the parties (or their counsel, if any) shall:*

- 1) File an original and three (3) copies of the Request for Successor, which shall state that the parties are unable to agree upon a Successor Mediator and Alternate Successor Mediator and that the parties therefore request the Court to appoint same.
- 2) The Request for Successor shall include a proof of service which reflects service of the Request for Successor on the Mediator and/or Alternate Mediator (as applicable), all parties to the Matter and their counsel, if any, and the Mediation Program Administrator. The

proof of service shall also reflect that a courtesy copy was provided to the Judge as required by Paragraph 7.4 of the General Order.

- 3) The Judge shall then take whatever action(s) he or she deems necessary and appropriate under the circumstances to resolve the issue of the appointment of a Successor Mediator and Alternate Successor Mediator, including, but not limited to, appointing a Successor Mediator and Alternate Successor Mediator sua sponte, or setting the Matter for hearing.
- 4) If the Judge directs that the Matter be set for hearing, the parties and their counsel, if any, shall be served by the Court with an OSC. The OSC shall set forth the date, time and place of the hearing.

(See, Section G of this Manual regarding the procedures for an OSC.)

- c. *If the parties (or their counsel, if any) file a Request for Successor based on a conflict of interest pursuant to Paragraph 5.6 of the General Order:*

- 1) The procedures set forth in Section D.2.b. above shall apply.

### **3. Notes:**

- a. The Order for Assignment and Appointment used to request a Successor Mediator and/or Alternate Successor Mediator is the same form used for appointment of the Mediator and Alternate Mediator (Official Form 702).

**PROCEDURES:  
NOTICE OF NON-COMPLIANCE  
WITH SECOND AMENDED  
GENERAL ORDER NO. 95-01  
GOVERNING MEDIATION PROGRAM**

**ISSUED  
DATE  
07/01/95**

**REVISED  
DATE  
09/01/99**

**E. NOTICE OF NON-COMPLIANCE WITH SECOND AMENDED GENERAL  
ORDER NO. 95-01 GOVERNING MEDIATION PROGRAM**

**1. Background:**

Pursuant to Paragraph 7.10 of the General Order, willful failure to attend the Mediation Conference and/or other violations of the General Order shall be reported to the Judge by the Mediator by written notice. The Judge will then take whatever action(s) he or she deems necessary and appropriate under the circumstances to resolve the issue of such willful failure to attend the Mediation Conference and/or other violations of the General Order.

**2. Procedures: “Notice of Non-Compliance with Second Amended General  
Order No. 95-01 Governing Mediation Program”**

- a. The Mediator and/or Alternate Mediator, as applicable, shall file an original and three (3) copies of the “Notice of Non-Compliance with Second Amended General Order No. 95-01 Governing Mediation Program (“Notice of Non-Compliance”) (Official Form 705) with the Court.
- b. The Notice of Non-Compliance shall include a proof of service which reflects service of the Notice of Non-Compliance on all parties to the Matter and their counsel, if any, and the Mediation Program Administrator. The proof of service shall also reflect that a courtesy copy has been provided to the Judge as required by Paragraph 7.10 of the General Order.
- c. The Judge will then take whatever action(s) he or she deems necessary and appropriate under the circumstances to resolve the issue of such willful failure to attend the Mediation Conference and/or other violations of the General Order, including, but not limited to, setting the Matter for hearing, directing the imposition of sanctions, etc.
- d. If the Judge directs that the Matter be set for hearing, the parties and their counsel, if any, shall be served by the Court with an OSC. The OSC shall set forth the date, time and place of the hearing.

(See, Section G of this Manual regarding the procedures for an OSC.)

### **3. Notes:**

- a. The Court defines “compliance” as a party’s attendance at the Mediation Conference, even if the party refuses to negotiate and chooses instead to “sit and sulk” during the entire Mediation Conference.
- b. The Court does not consider it appropriate for a Mediator to make a subjective assessment as to whether or not the parties are participating in “good faith” for the purposes of the Notice of Non-Compliance discussed in this Section of the Manual.

The Court, however, does expect parties and their counsel, if any, to comply with all of the provisions of the General Order, including, but not limited to, the provisions concerning execution of a Confidentiality Agreement, preparation of a Mediation Statement, attendance at the Mediation Conference, etc.

**PROCEDURES:  
MEDIATOR'S CERTIFICATE  
REGARDING CONCLUSION  
OF MEDIATION ASSIGNMENT**

**ISSUED  
DATE  
07/01/95**

**REVISED  
DATE  
09/01/99**

**F. MEDIATOR'S CERTIFICATE REGARDING CONCLUSION OF MEDIATION ASSIGNMENT**

**1. Background:**

Pursuant to Section 8.0 of the General Order, upon completion of the Mediation Conference, the Mediator or Alternate Mediator, as applicable, shall file and serve a certificate showing whether or not there has been compliance with the Mediation Conference requirements of the General Order and whether or not a settlement of the Matter has been reached. If a settlement of the Matter has been reached, the certificate shall also designate the party responsible for preparing a stipulation and proposed order for settlement of the Matter.

Regardless of the outcome of the Mediation Conference, the Mediator and/or Alternate Mediator, as applicable, shall **not** provide the Judge with any details of the substance of the Mediation Conference.

**2. Procedures: "Mediator's Certificate Regarding Conclusion of Mediation Assignment"**

- a. The Mediator and/or Alternate Mediator, as applicable, shall file an original and three (3) copies of the "Mediator's Certificate Regarding Conclusion of Mediation Assignment" ("Mediator's Certificate") (Official Form 706) with the Court within ten (10) calendar days of the conclusion of the Mediation Conference.
- b. The Mediator's Certificate shall include a proof of service which reflects service of the Mediator's Certificate on the parties and their counsel, if any, and the Mediation Program Administrator.
- c. The Clerk's Office shall review the Mediator's Certificate to determine whether or not a settlement of the Matter was reached by the parties.
- d. If the Clerk's Office determines that a settlement of the Matter **has** been reached, then:

- 1) The Clerk's Office will tickler the Matter and determine if a stipulation and order for settlement of the Matter is filed with the Court within 30 calendar days from the date of the filing of the Mediator's Certificate.

(See, Section H of this Manual regarding the procedures for the "Stipulation and [Proposed] Order Thereon.")

- 2) If the party (or its counsel, if any) designated in the Mediator's Certificate to prepare a stipulation and proposed order for settlement of the Matter fails to file such a stipulation and proposed order within thirty (30) calendar days from the date of filing of the Mediator's Certificate, the Matter will be set for hearing so that the Judge may determine the status of the Matter.
  - 3) If the Matter is set for hearing, the parties and their counsel, if any, shall be served by the Court with an OSC. The OSC will set forth the date, time and place of the hearing.
  - 4) If the designated party (or its counsel, if any), files the stipulation and proposed order for settlement of the Matter with the Court and provides a courtesy copy of the documents to the Judge at least 48 hours prior to the hearing date set forth on the OSC, the hearing will be taken off calendar. **The parties, however, are required to confirm with the Court that the Matter has, with the approval of the Judge, in fact been taken off calendar.**
  - 5) If the parties (or their counsel, if any) fail to file the stipulation and proposed order for settlement of the Matter with the Court and provide a courtesy copy of the documents to the Judge at least 48 hours prior to the hearing date set forth on the OSC, appearance at the hearing shall be required.
- e. If the Clerk's Office determines that a settlement of the Matter has **not** been reached by the parties, the Clerk's Office will refer the Matter to the Judge to determine whether to set the Matter for hearing.
  - f. If the Judge directs that the Matter be set for hearing, the parties and their counsel, if any, shall be served by the Court with an OSC. The OSC shall set forth the date, time and place of the hearing.

**PROCEDURES:  
ORDER FOR AND NOTICE  
OF HEARING ON STATUS  
OF MATTER ASSIGNED TO  
BANKRUPTCY MEDIATION PROGRAM**

**ISSUED  
DATE  
7/01/95**

**REVISED  
DATE  
09/01/99**

**G. ORDER FOR AND NOTICE OF HEARING ON STATUS OF MATTER ASSIGNED TO BANKRUPTCY MEDIATION PROGRAM**

**1. Background:**

The Clerk's Office will prepare an "Order for and Notice of Hearing on Status of Matter Assigned to Bankruptcy Mediation Program" ("OSC") (Official Form 707 - Reserved for Court Use Only) if any of the following types of events occur:

- a. If the Request for Assignment (Official Form 701) is filed without the required Order for Assignment and Appointment (Official Form 702), the Judge may direct that the Request for Assignment be returned to the submitting party with instructions that the Request for Assignment be refiled with the Order for Assignment and Appointment.

(See Section A of this Manual regarding the procedures for the Request for Assignment.)

If the Judge does not direct that the Request for Assignment be returned as described above, and if no Order for Assignment and Appointment is filed within fifteen (15) calendar days from the date of filing of the Request for Assignment, the Matter will be set for hearing.

- b. If, within fifteen (15) days of the filing by the **Alternate Mediator** of a Notice of Unavailability, the parties (or their counsel, if any) fail to file a Request for Successor, the Matter will be set for hearing.
- c. If, within fifteen (15) days of the filing by the **Alternate Mediator** of the Notice of Unavailability, the parties (or their counsel, if any) file a Request for Successor which lacks the required Order for Assignment and Appointment of a Successor Mediator and Alternate Successor Mediator, the Judge may direct that the Request for Successor be returned to the submitting party with instructions that the Request for Successor be refiled with the required Order for Assignment and Appointment of a Successor Mediator and Alternate Successor Mediator.

If the Judge does not direct that the Request for Successor be returned as described above, and if no Order for Assignment and Appointment of a Successor Mediator and Alternate Successor Mediator has been filed with the Court within fifteen (15) calendar days from the date of filing of a Notice of Unavailability by the **Alternate Mediator**, the Matter will be set for hearing.

- d. If the Mediator and/or Alternate Mediator files a Notice of Non-Compliance, the Matter will be set for hearing.
- e. If a stipulation and proposed order for settlement of the Matter has not been filed with the Court within thirty (30) calendar days from the date of filing of the Mediator's Certificate, the Matter will be set for hearing.

**2. Procedures: "Order for and Notice of Hearing On Status of Matter Assigned to Bankruptcy Mediation Program"**

- a. If, as a result of any of the following types of events described above, a Matter is set for hearing, the parties and their counsel, if any, shall be served by the Court with an OSC. The OSC shall set forth the date, time and place of the hearing.
- b. If the Court issues the OSC due to a failure to file a required document, and the parties (or their counsel, if any) file the subject document with the Court and provide a courtesy copy of the document to the Judge at least 48 hours prior to the hearing date set forth on the OSC, the hearing will be taken off calendar. **The parties, however, are required to confirm with the Court that the Matter has, with the approval of the Judge, in fact been taken off calendar.**
- c. If the parties (or their counsel, if any) fail to file the subject document with the Court and provide a courtesy copy of the document to the Judge at least 48 hours prior to the hearing date set forth on the OSC, appearance at the hearing shall be required.

**PROCEDURES:  
STIPULATION AND [PROPOSED]  
ORDER THEREON**

**ISSUED  
DATE  
7/01/95**

**REVISED  
DATE  
09/01/99**

**H. STIPULATION AND [PROPOSED] ORDER THEREON**

**1. Background:**

Pursuant to Section 8.0 of the General Order, if the parties have reached an agreement regarding the disposition of the Matter upon completion of the Mediation Conference, the parties, with the advice of the Mediator, shall determine who shall prepare the writing to dispose of the Matter, and they may continue the Mediation Conference to a date convenient for all parties and the Mediator if necessary.

The party designated to prepare the writing to dispose of the Matter shall promptly submit the fully executed document to the Judge for approval. The writing should be in the form of a stipulation and proposed order for settlement of the Matter.

**2. Procedures: “Stipulation and [Proposed] Order Thereon”**

- a. The party (or counsel, if any) designated in the Mediator’s Certificate Regarding Conclusion of Mediation Assignment” (“Mediator’s Certificate”) (Official Form 706) to prepare the writing which disposes of the Matter (the “designated party”) shall prepare a “Stipulation and [Proposed] Order Thereon” (“stipulation and proposed order”) for this purpose and shall file an original and three (3) copies of the stipulation and proposed order with the Court.
- b. The title of the stipulation and of the proposed order shall include the words “Bankruptcy Mediation Program” (e.g., “Stipulation to Approve Compromise of Controversy Pursuant to **Bankruptcy Mediation Program**; [Proposed] Order Thereon Approving Compromise of Controversy Pursuant to **Bankruptcy Mediation Program**”).
- c. The stipulation and proposed order shall include a proof of service which reflects service on all parties to the Matter and their counsel, if any, the Mediator and/or Alternate Mediator, as applicable, and the Mediation Program Administrator.

- d. The designated party shall file a “Notice of Entry and Certificate of Mailing” of the proposed order as required by the Local Bankruptcy Rule 9021-1(1).
- e. If the designated party fails to file the stipulation and proposed order within thirty (30) calendar days from the date of filing of the Mediator’s Certificate (Official Form 706), the Matter will be set for hearing so that the Judge may determine the status of the Matter.
- f. If the Matter is set for hearing, the parties and their counsel, if any, shall be served by the Court with an OSC. The OSC will set forth the date, time and place of the hearing.
- g. If the designated party files the stipulation and proposed order with the Court at least 48 hours prior to the hearing date set forth on the OSC, the hearing will be taken off calendar. **The parties, however, are required to confirm with the Court that the Matter has, with the approval of the Judge, in fact been taken off calendar.**
- h. If the parties (or their counsel, if any) fail to file the stipulation and proposed order for settlement of the Matter with the Court and provide a courtesy copy of the documents to the Judge at least 48 hours prior to the hearing date set forth on the OSC, appearance at the hearing shall be required.

**3. Notes:**

- a. See Section B.3.a. for citation of Local Bankruptcy Rule 9021-1(1).

**PROCEDURES:  
INITIAL MEDIATION  
CONFIDENTIALITY AGREEMENT  
- CONFIDENTIAL - NOT TO BE  
FILED WITH THE COURT**

**ISSUED  
DATE  
7/01/95**

**REVISED  
DATE  
09/01/99**

**I. INITIAL MEDIATION CONFIDENTIALITY AGREEMENT  
- CONFIDENTIAL -- NOT TO BE FILED WITH THE COURT**

**1. Background:**

Pursuant to Section 6.0 of the General Order, no written or oral communication made, or any document presented, by any party, attorney, Mediator, Alternate Mediator or other participant in connection with or during any Mediation Conference, including the written mediation statement referred to in Paragraph 7.8 of the General Order, may be disclosed to anyone not involved in the Mediation Conference.

Nor may any such communication be used in any pending or future proceeding in this Court or any other court, and all such communications and documents shall be subject to all of the protections afforded by FED. R. BANKR. P. 7068.

The parties and the Mediator shall enter into a written confidentiality agreement. Such communications may be disclosed, however, if all participants in the Mediation, including the Mediator, agree in writing to such disclosure. Notwithstanding the foregoing, Section 6.0 of the General Order does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of a Mediation Program Conference ("Mediation Conference").

Nothing in Section 6.0 of the General Order shall be construed to prevent parties, counsel for the parties or Mediators from responding in absolute confidentiality to inquiries or surveys by persons authorized by the Court to evaluate the Mediation Program. In addition, nothing contained in Section 6.0 of the General Order shall be construed to prohibit the parties from entering into or filing procedural or factual stipulations based on suggestions or agreements made in connection with a Mediation Conference.

**2. Procedures: “Initial Mediation Confidentiality Agreement - Confidential -- Not To Be Filed With The Court”**

- a. The parties and the Mediator shall complete and sign the “Initial Mediation Confidentiality Agreement” (“Confidentiality Agreement”) (Official Form 708).
- b. The Confidentiality Agreement shall **not** be filed with the Court and no one other than the Mediator and the parties and their counsel, if any, shall have access to it.

**3. Notes:**

- a. If a copy of the Confidentiality Agreement is inadvertently filed with the Court, it will not be entered on the Court’s docket. Instead, it will be routed immediately to the Mediation Program Administrator (Judge Russell). The Confidentiality Agreement will then be returned by mail to the Mediator. No copy of the Confidentiality Agreement will be retained by the Court or by the Mediation Program Administrator.
- b. FED. R. BANKR. P. 7068 (“Offer of Judgment”) provides:

**Rule 7068. Offer of Judgment**

Rule 68 F. R. Civ. P. applies in adversary proceedings.

**Rule 68. Offer of Judgment**

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer.

The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability. (As amended Dec. 27, 1946, eff. Mar. 19, 1948; Feb. 28, 196, eff. July 1, 1996; Mar. 2, 1987, eff. Aug. 1, 1987.)

**PROCEDURES:  
MEDIATION PROGRAM STATEMENT  
- CONFIDENTIAL -- NOT TO  
BE FILED WITH THE COURT**

**ISSUED  
DATE  
7/01/95**

**REVISED  
DATE  
09/01/99**

**J. MEDIATION PROGRAM STATEMENT - CONFIDENTIAL -- NOT TO BE  
FILED WITH THE COURT**

**1. Background:**

Pursuant to Paragraph 7.8 of the General Order, each party shall submit directly to the Mediator a written Mediation Program Statement ("Mediation Statement"). Mediation Statements shall be subject to all of the protections afforded by the provisions of Section 6.0 of the General Order and by FED. R. BANKR. P. 7068. The Mediation Statements shall **not** be filed with the Court, and the Judge shall not have access to them.

**2. Procedures: "Mediation Program Statement - Confidential -- Not To Be  
Filed With The Court"**

- a. The parties (or their counsel, if any) shall submit directly to the Mediator a written Mediation Program Statement ("Mediation Statement") no less than five (5) court days prior to the date of the initial Mediation Conference, unless such time period is modified by the Mediator.
- b. Unless compliance is excused by the Mediator, Mediation Statements shall not exceed ten (10) pages, excluding exhibits and attachments, and shall comply with all of the requirements of Local Bankruptcy Rule 1002-1(4)(a), (b), (c) and (g).
- c. While Mediation Statements may include any information that would be useful, they **must**:
  - 1) Identify the person(s), in addition to counsel, who will attend the Mediation Conference as representative(s) of the party, who have authority to make decisions;
  - 2) Describe briefly the substance of the dispute;
  - 3) Address any legal or factual issue(s) that might appreciably reduce the scope of the dispute or contribute significantly to settlement;

- 4) Identify the discovery that could contribute most to preparing the parties for meaningful discussions;
  - 5) Set forth the history of past settlement discussions, including disclosure of any prior and any presently outstanding offers and demands;
  - 6) Make an estimate of the cost and time to be expended for further discovery, pretrial motions, expert witnesses and trial; and
  - 7) Indicate presently scheduled dates for further status conferences, pretrial conferences, trial, or otherwise.
- d. Parties may identify in the Mediation Statements the person(s) connected to a party opponent (including a representative of a party opponent's insurance carrier) whose presence at the Mediation Conference would substantially improve the prospects for making the session productive. The fact that a person has been so identified shall not, by itself, result in an order compelling that person to attend the Mediation Conference.
  - e. Parties shall attach to the Mediation Statements copies of the document(s) from which the dispute has arisen (e.g., contracts), or the document(s) whose availability would materially advance the purposes of the Mediation Conference.

### **3. Notes:**

- a. If a copy of the Mediation Statement is inadvertently filed with the Court, it will **not** be entered on the Court's docket. Instead, it will be routed immediately to the Mediation Program Administrator. The Mediation Statement will then be returned by mail to the Mediator. No copy of the Mediation Statement will be retained by the Court or by the Mediation Program Administrator.
- b. Local Bankruptcy Rule 1002-1(4)(a), (b) and (c) provides:

#### **FORM OF PAPERS FILED WITH COURT**

#### **(4) PAPERS PRESENTED TO THE COURT - FORM AND FORMAT**

This Local Bankruptcy Rule shall apply unless otherwise expressly provided elsewhere in the Local Bankruptcy Rules or a Court-approved form is used.

- (a) Legibility. All Papers shall be typewritten or printed if prepared by hand, or prepared by a photocopying or other duplicating process that will produce clear and permanent copies equally legible to printing, in black or dark blue ink. The typeface shall not be smaller than 10 point.
- (b) Paper. The original of all Papers shall be submitted on opaque, unglazed, white paper of standard quality not less than 13-pound weight. The paper shall be 8½ x 11 inches, numbered on the left margin with not more than 28 lines per page. The lines on each page shall be numbered consecutively. Line 1 shall begin at least one inch below the top edge of the paper. Only one side of the paper shall be used, unless otherwise provided.
- (c) Pagination. All Papers shall be numbered consecutively at the bottom of each page, including any attached exhibits.

c. Local Bankruptcy Rule 1002-1(4)(g) provides:

**FORM OF PAPERS FILED WITH COURT**

- (g) Spacing. Except as provided herein, the typing or printing on Papers shall be double-spaced, including citations. Footnotes may be single-spaced. The description of real property may be single-spaced. Quotations from cited cases or other authorities shall be clearly indented not less than five spaces or more than twenty spaces and may be single-spaced if the quotation is fifty or more words.

c. See, Section I.3.b. for citation to FED. R. BANKR. P. 7068 (“Offer of Judgment”).

**K. MEDIATION CONFERENCE (CONFIDENTIAL)**

**1. Background:**

Pursuant to Paragraph 7.9a of the General Order, counsel for each party who is primarily responsible for the Matter (or the party, where proceeding in pro se) shall personally attend the Mediation Conference and any adjourned session(s) of that conference. Counsel for each party shall come prepared to discuss all liability issues, all damage issues, and the position of the party relative to settlement, in detail and in good faith.

Pursuant to Paragraph 7.9b of the General Order, all individual parties, and representatives with authority to negotiate and to settle the Matter on behalf of parties other than individuals, shall personally attend the Mediation Conference, unless excused by the Mediator for cause. A party or lawyer who is excused from appearing in person at the Mediation Conference may be required to participate by telephone.

Pursuant to Paragraph 7.10 of the General Order, willful failure to attend the Mediation Conference shall be reported to the Judge by written notice.

Pursuant to Paragraph 7.11 of the General Order, the Mediation Conference shall proceed informally. Rules of evidence shall not apply. There shall be no formal examination or cross-examination of witnesses. Where necessary, the Mediator may conduct continued Mediation Conferences after the initial session. As appropriate, the Mediator may:

- a. Permit each party (through counsel or otherwise) to make an oral presentation of its position;
- b. Help the parties identify areas of agreement and, where feasible, enter into stipulations;
- c. Assess the relative strengths and weaknesses of the parties' contentions and evidence, and explain as carefully as possible the reasoning of the Mediator that supports these assessments;

- d. Assist the parties, through separate consultation or otherwise, in settling the dispute;
- e. Estimate, where feasible, the likelihood of liability and the dollar range of damages;
- f. Help the parties devise a plan for sharing the important information and/or conducting the key discovery that will assist them as expeditiously as possible to participate in meaningful settlement discussions or to posture the case for disposition by other means; and
- g. Determine whether some form of follow up to the Mediation Conference would contribute to the case development process or to settlement.

Pursuant to Paragraph 7.12 of the General Order, if the Mediator makes any oral or written suggestions as to the advisability of a change in any party's position with respect to settlement, the attorney for that party shall promptly transmit that suggestion to the client.

## **2. Procedures: Mediation Conference (Confidential)**

- a. The parties shall enter into a written Confidentiality Agreement pursuant to Section 6.0 of the General Order.
- b. The parties shall prepare and submit the Mediation Statement directly to the Mediator no less than five (5) court days prior to the date of the initial Mediation Conference, unless such time period is modified by the Mediator, pursuant to Section 7.0 of the General Order.
- c. The parties shall attend the Mediation Conference pursuant to Paragraph 7.9 of the General Order and as described in this Section of the Manual.
- d. The Mediator shall report willful failure to attend the Mediation Conference to the Judge pursuant to Paragraph 7.10 of the General Order.

## **3. Notes:**

- a. The Court expects the Mediator and all participants to treat the Mediation Conference as seriously as if it were a court hearing, despite the informal setting. Nothing short of an extreme emergency should be allowed to interrupt the Mediation Conference for any purpose whatsoever.
- b. The General Order intentionally does not define the word "day" with respect to the length of a Mediation Conference. It is expected that the definition will vary from Matter to Matter and will be determined in the discretion of the Mediator and the participants.

It is further expected that a “day” may extend beyond a normal “work day,” particularly if the Mediator and/or the participants believe that significant progress is being made in the Matter.

It is therefore strongly suggested that in order to allow sufficient time to complete a Mediation Conference, no other events be scheduled by the Mediator or any of the participants on the same day as a Mediation Conference, unless advised otherwise by the Mediator prior to the commencement of the Mediation Conference.

**PROCEDURES:  
MEDIATOR'S REPORT  
OF MEDIATION CONFERENCE  
- CONFIDENTIAL -- NOT TO  
BE FILED WITH THE COURT**

**ISSUED  
DATE  
7/01/95**

**REVISED  
DATE  
09/01/99**

**L. MEDIATOR'S REPORT OF MEDIATION CONFERENCE  
- CONFIDENTIAL -- NOT TO BE FILED WITH THE COURT**

**1. Background:**

Pursuant to Section 8.0 of the General Order, the Mediator shall provide a written report of the Mediation Conference to the Mediation Program Administrator upon the conclusion of the Mediation Conference. The written report shall contain an estimate of the number of hours spent in the Mediation Conference and otherwise on the Matter.

The purpose of the written report is to assist the Mediation Program Administrator in compiling useful data to evaluate the Mediation Program and to aid the Court in assessing the efforts of the Panel mediators.

**2. Procedures: "Mediator's Report of Mediation Conference - Confidential -- Not to Be Filed with the Court"**

- a. The Mediator shall prepare the "Mediator's Report of Mediation Conference" ("Mediator's Report") (Official Form 709) at the conclusion of the Mediation Conference.
- b. The Mediator's Report shall be mailed to the Mediation Program Administrator. The Mediator's Report shall **not** be filed with the Court.

**3. Notes:**

- a. The Judge assigned to the Matter shall not have access to the Mediator's Report. It is for the Mediation Program Administrator's use only.
- b. If a copy of the Mediator's Report is inadvertently filed with the Court, it will **not** be entered on the Court's docket. Instead, it will be forwarded to the Mediation Program Administrator. The document will then be used by the Mediation Program Administrator for statistical purposes on the Court's behalf.